

PATENT COOPERATION TREATY

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INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

REC'D 04 JUN 2004

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Applicant's or agent's file reference 62364A	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA/416)	
International application No. PCT/US 03/07591	International filing date (day/month/year) 11.03.2003	Priority date (day/month/year) 11.03.2002
International Patent Classification (IPC) or both national classification and IPC D01F6/30		
Applicant DOW GLOBAL TECHNOLOGIES INC. et al		
<p>1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 5 sheets, including this cover sheet.</p> <p><input type="checkbox"/> This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).</p> <p>These annexes consist of a total of sheets.</p>		
<p>3. This report contains indications relating to the following items:</p> <p>I <input checked="" type="checkbox"/> Basis of the opinion</p> <p>II <input type="checkbox"/> Priority</p> <p>III <input checked="" type="checkbox"/> Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p>IV <input checked="" type="checkbox"/> Lack of unity of invention</p> <p>V <input checked="" type="checkbox"/> Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p>VI <input type="checkbox"/> Certain documents cited</p> <p>VII <input type="checkbox"/> Certain defects in the international application</p> <p>VIII <input type="checkbox"/> Certain observations on the international application</p>		
Date of submission of the demand 13.10.2003	Date of completion of this report 03.06.2004	
Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer Lux, R Telephone No. +49 89 2399-8593	



**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT**

International application No. PCT/US 03/07591

I. Basis of the report

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

Description, Pages

1-34 as originally filed

Claims, Numbers

1-52 as originally filed

Drawings, Sheets

1/4-4/4 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
☐ the language of publication of the international application (under Rule 48.3(b)).
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority in written form.
☐ furnished subsequently to this Authority in computer readable form.
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
☐ the claims, Nos.:
☐ the drawings, sheets:

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5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)

6. Additional observations, if necessary:

III. Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:

- ☐ the entire international application,
☒ claims Nos. 25-32,36-41,43-47,49-52

because:

- ☒ the said international application, or the said claims Nos. 25-32,36-41,43-47,49-52 relate to the following subject matter which does not require an international preliminary examination (specify):

see separate sheet

- ☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):
☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.

- ☐ no international search report has been established for the said claims Nos.

2. A meaningful international preliminary examination cannot be carried out due to the failure of the nucleotide and/or amino acid sequence listing to comply with the standard provided for in Annex C of the Administrative Instructions:

- ☐ the written form has not been furnished or does not comply with the Standard.
☐ the computer readable form has not been furnished or does not comply with the Standard.

IV. Lack of unity of invention

1. In response to the invitation to restrict or pay additional fees, the applicant has:

- ☐ restricted the claims.
☐ paid additional fees.
☐ paid additional fees under protest.
☐ neither restricted nor paid additional fees.

2. ☐ This Authority found that the requirement of unity of invention is not complied with and chose, according to Rule 68.1, not to invite the applicant to restrict or pay additional fees.

3. This Authority considers that the requirement of unity of invention in accordance with Rules 13.1, 13.2 and 13.3 is

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☐ complied with.

☐ not complied with for the following reasons:

4. Consequently, the following parts of the international application were the subject of international preliminary examination in establishing this report:

☐ all parts.

☒ the parts relating to claims Nos. 1-24,33-35,48 .

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	
	No: Claims	1-24,33-35,48
Inventive step (IS)	Yes: Claims	
	No: Claims	1-24,33-35,48
Industrial applicability (IA)	Yes: Claims	1-24,33-35,48
	No: Claims	

2. Citations and explanations

see separate sheet

**INTERNATIONAL PRELIMINARY
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Re Item III

Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

Only one examination fee has been payed, therefore, only one opinion is given in view of the first invention (see Section IV. below).

Re Item IV

Lack of unity of invention

The separate inventions are:

1st invention: Claims 1-24, 33-35, 48: "reversed" heat-set fiber, yarn and elastic materials, and corresponding methods

2nd invention: Claims 25-32, 36-40, 43-47, 51, 52: "reversible" heat-set covered fiber, and corresponding methods

3rd invention: Claim 41: method of dyeing a covered fiber

4th invention: Claims 49, 50: stretchable nonwoven fabric

As indicated above, these inventions are not so linked as to form a single general inventive concept, ie there is no unifying feature (Rule 13.1 PCT).

Re Item V

Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

~~"Heat set"~~ elastic fibers are well known in the art (see D1: US-A-3 315 328, D2: US-A-3 325 876, D3: US-A-3 487 628, or D4: WO 99/11688). These prior art fibers may also have the attribute of being "reversed" heat-set (cf. claim 1) in the widest sense of this ~~vague term~~, irrespective of the question whether the materials are heated to a temperature ~~in excess~~ of a temperature at which at least "a portion" of the crystallites (of the ~~fiber~~ forming polymer) are molten. Contrary to the Applicants' view, the scope of claim 1 is not limited to a subject-matter (ie to a specifically "reversed" heat set elastic fiber) as defined on page 11 lines 1-13. The scope of a claim is defined by its language, only. Further, the process for heat-setting a yarn as defined in claim 33 does not include any ~~distinguishing~~ feature over the processes described in the cited prior art, ie the heating ~~temperatures~~ disclosed in D1 to D4 may well lead to a molten portion of crystallites.

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